

1 2000 hearing on the proposed amendment. [12 AR 1008-1065.] and discussed on the record
2 before the vote was taken. [Id.] In light of the safety concerns voiced by the La Costa Beach
3 residents, Commissioner Reilly requested that Mark Baylor of the Coastal Conservancy explain
4 the ultimate safety plan that would be implemented should the Conservancy come in to
5 possession of the La Costa Beach site. [12 AR 1057-1061.] After hearing that the site would not
6 be opened immediately upon transfer and that safety measures and a management plan would be
7 proposed by the Conservancy, Commissioner Reilly explicitly expressed that the safety
8 explanation was helpful to him, and hopefully somewhat clarifying to the concerned neighbors.
9 [Id.] Additionally, Commissioner Wan inquired further about the management plan. [12 AR
10 1061,1062.] Finally, Commissioner Wan discussed her familiarity with the site, and explained
11 her rationale for supporting the proposed amendments. [12 AR 1062, 1063.] Following the
12 discussion, a unanimous motion approving all three proposed amendments was passed. [12 AR
13 1063-1065.] Commission staff prepared revised findings incorporating the evidence provided at
14 the hearing thereafter, and the Commission adopted the revised findings on June 13, 2000. [13
15 AR 1123.]

16 **B. The Adoption of Revised Findings is Specifically Authorized by Statute and by**
17 **Regulations.**

18 The Commission's adoption of revised findings is specifically authorized by statute and
19 by its regulations which have been duly approved by the Office of Administrative Law. The
20 Coastal Act provides that "[a]doption of finding for any action taken by the commission requires
21 a majority vote of the members from the prevailing side present at the meeting of the
22 commission, with at least three of the prevailing members present and voting." (Pub. Res. Code
23 § 30315.1.) Logically, this section can only apply to the adoption of revised findings for a
24 previously made decision. When the Commission votes in the manner recommended by staff,
25 the staff recommendation and proposed findings automatically become the Commission's
26 decision and findings. [Cal Code Regs. 14 §§ 13092-13096.] There is no need for a subsequent
27 vote to adopt findings unless there are revision to be made. Thus, the Commission is specifically
28 authorized by the Legislature to adopt revised findings to explain a previously made decision.

1 The Commission's regulations implementing this statute provide that all decisions of the
2 Commission relating to permit applications shall be accompanied by written findings about the
3 consistency of the application with the Coastal Act and with CEQA and findings of fact and
4 reasoning supporting the decision. [Cal. Code Regs., 14 § 13096(a).] Ordinarily, the
5 Commission's findings and reasoning will be found in the staff report prepared for the hearing at
6 which the Commission's action will be taken. [Cal. Code Regs., 14 § 13096(b).] However, if the
7 Commission action is "substantially different than that recommended in the staff report, the
8 prevailing commissioners shall state the basis for their action in sufficient detail to allow staff to
9 prepare a revised staff report with proposed revised findings that reflect the action of the
10 commission." [Cal. Code Regs., 14 § 13096(b).] The Commission vote taken on proposed
11 revised findings shall occur after a public hearing and the public hearing shall solely address
12 whether the proposed revised findings reflect the action of the Commission [Cal. Code Regs., 14
13 § 13096(c).]

14 The rationale behind the statute and the regulations is simple. The Commission is a
15 statewide body comprised of six public members and six locally elected officials as well as four
16 ex officio members from other state agencies. [Pub. Res. Code § 30315.] The Commission is
17 not authorized to take a straw vote on an application; it can only vote to approve, approve with
18 conditions or disapprove an application at the time the public hearing is held. [Cal Code Regs.,
19 14 § 13092.] Any Commission action taken at a meeting is final on the day of the vote; no
20 commissioner may change his or her vote after the tally of the vote has been announced by the
21 chairperson of the Commission. [Cal. Code Regs., § 13094.]

22 Findings serve an important function. They explain the analytic route the agency
23 traveled in order to reach its decision based upon the evidence before it. [Code Civ. Proc. §
24 1094.5. As the Supreme Court explained in *Topanga Ass'n. for a Scenic Community v. County*
25 *of Los Angeles* (1974) 11 Cal.3d 506, 515-516, implicit in Section 1094.5 in the requirement that
26 the agency which renders the challenged decision must set forth findings to bridge the analytic
27 gap between the raw evidence and ultimate decision or order; findings enable the reviewing court
28 to trace and examine the agency's mode of analysis. When the Commission hears a permit

1 application, the Commission has draft findings before it in the form of a staff report and
2 recommendations. [Cal. Code Regs., 14 §§ 13057, 13090.] If the Commission does not vote per
3 staff, it will not have findings to explain that decision unless it adopts revised findings later.
4 Cases subsequent to *Topanga* frown upon post hoc rationalization of agency action. However, in
5 those cases, the agency either did not adopt findings at all or did not explain its rationale on the
6 record at the time of taking action, thus the later adopted findings really did constitute post hoc
7 rationalizations. All are distinguishable for the commission's process since the Commissioners'
8 rationale is fully explained at the time the vote is taken.

9 1. The Revised Findings Adopted by the Commission
10 Were Clearly Supported By the Testimony and
11 Evidence Presented at the Hearing

12 The Revised Findings note that with regards to concerns that the provision of public
13 access and views at the proposed mitigation site would result in potential traffic and pedestrian
14 hazards, the Commission notes that, due to the nature of Pacific Coast Highway as a relatively
15 hazardous roadway, no beachfront area in Malibu along Pacific Coast Highway is without the
16 potential for hazard. [13 AR 1105.]

17 "In the case of the proposed mitigation site, the Commission
18 notes that the site is located along a relatively straight section of the
19 highway with adequate sight distance and that there is adequate area
20 for parking along the beachfront side of the street. [Id.] In addition,
21 a stop light with a pedestrian crossing is located a few hundred feet
22 to the west of the site. The Commission further notes that the subject
23 site is typical for beachfront lots along Pacific Coast Highway and that
24 use of the mitigation site for public access and viewshed presents no
25 greater hazard to traffic and pedestrians than the use of any other public
26 vertical accessways which are open and available for public use which
27 are located along Pacific Coast Highway in the Malibu area. [Id.]
Further, in regards to concerns that the coastal waters near the proposed
mitigation site are subject to hazardous currents and that, therefore, the
mitigation site is not suitable for the provision of public access to the
beach from the highway, the Commission notes that the offshore currents
near the subject site are substantially similar to other areas of the Malibu
coastline. [Id.] Therefore, the Commission finds that the availability of
public access to the sandy beach at the subject site does not constitute a
greater hazard than the provision of public access to the sandy beach
anywhere else along the Malibu coastline." [Id.]

28 Petitioners argue that there was no evidence to support the foregoing findings at the
hearing. [POB, P. 9, lines 20-25.] Here, Petitioners are again mistaken. At the hearing on April

1 12, 2000, Staff acknowledged that "[r]elative to what we have heard a number of concerns
2 today, regarding safety on Pacific Coast Highway, and I think safety on Pacific Coast Highway is
3 always a concern. [12 AR 1045.] Further, after indicating that he was familiar with the access
4 and traffic safety issues up and down the Malibu stretch of Pacific Coast Highway, Conservancy
5 representative Mark Baylor stated:

6 "Everywhere we go in Malibu, the issue of traffic safety
7 looms very large in our deliberations over providing public access.
8 And as you know, no place in Malibu is ideal for public access,
9 given the numerous constraints. We are attempting in this
10 constrained environment, however, to provide safe public access."
[12 AR 1058, 1059.]

11 "Everywhere the Conservancy has proposed to open accessway
12 in Malibu, the issue of traffic safety has come up as a very big issue."
13 [12 AR 1060.]

14 Additionally, Commissioner Sarah Wan further states:

15 "Let me just make a quick statement about this access. And,
16 I think what everybody is hearing is that there is no ideal site in Malibu,
17 when it comes to the Pacific Coast Highway. It is a very dangerous
18 highway. This is about as good a site as any site, and it is an important
19 mandate of this Commission that we obtain and open the publicly owned
20 beaches to the public.

21 This particular site has - - I am very familiar with the site. It is
22 as good as any place that could possibly be along Pacific Coast Highway
23 for any site that is adjacent to Pacific Coast Highway. Within a few feet,
24 there is a light, so you can cross over at Carbon Canyon. There is a light,
25 and you can cross, and at Carbon there is lots of parking on the street.
26 That is quite removed from the traffic, and there is a bus in the area. So,
27 this is about as good a place as we can get. We don't have to actually go
28 out and build a parking lot." [12 AR 1063.]

29 In light of the foregoing testimony presented at the hearing, the Revised Findings
30 prepared by staff were clearly and sufficiently reflect the evidence offered. Rather than post hoc
31 rationalization, the Commission's Revised Findings are simply a written version of the rationale
32 articulated by the Commissioners and staff on the record and transcribed by the court reporter at
33 the hearing.

34 Requiring the Commission to have before it findings designed to explain every possible
35 decision that might be made would simply be unworkable. Staff would have to prepare multiple
36 versions of findings with every possible nuance included or the Commission would have to
37 continue every controversial project to allow new finding to be prepared before the vote is taken.
38

1 The burden on staff to prepare multiple reports would be unthinkable and the unending process
2 would be untenable for applicants and opponents alike.

3 In sum, Petitioners contention that Commission's Revised Findings were somehow
4 insufficient or incompetent to support the Commission's decision on April 12, 2000, is
5 erroneous. The Coastal Act and the Commission's regulations authorize the Commission to
6 adopt revised written findings to support previously made decisions where the Commission's
7 rationale for the decision was articulated on the record at the hearing during which the vote was
8 taken. The written findings simply memorialize the explanation orally presented at that time.
9 Reviewing courts and the public are fully aware of the reasoning behind the decision.

10 C. The Commission is the Sole Arbiter of the Evidence and Sole Judge of the
11 Credibility of the Witnesses.

12 Petitioners contend that because they presented evidence from "competent first-hand
13 witnesses" that was contrary to the Revised Findings adopted by the Coastal Commission, the
14 Commission's decision was not supported by the evidence. [POB, P. 10, 11.] Petitioners further
15 argue that the "only" evidence before the Commission was that presented by the La Costa Beach
16 residents indicating that the proposed mitigation site was extremely dangerous, and that there is a
17 "complete lack of parking at this location.." [POB, P. 11.] Petitioners' contentions are simply
18 false.

19 As provided above, there was objective, competent testimony presented at the hearing by
20 staff, the Conservancy and Commissioners familiar with the area hearing that contradicted the
21 opinions of La Costa Beach residents. Furthermore, the transcript of the hearing clearly
22 provides that the Commission considered the evidence presented and in its quasi-judicial role,
23 considered the evidence and arrived at its decision. [12 AR 1008-1065.] Given that the
24 Commission is the sole arbiter of the evidence and the credibility of the witnesses, its unanimous
25 vote approving the La Costa Beach parcel for off-site mitigation clearly indicates that the
26 contrary evidence presented by La Costa Beach residents was not compelling. Furthermore, the
27 fact that contrary evidence exists, or that a contrary finding may be deemed equally or more
28 reasonable does not justify a court disregarding or overturning a finding of fact of an

1 administrative agency. (*Boreta Enterprises, Inc. v. Department of Alcoholic Bev. Control* (1970)
2 2 Cal.3d 85, 94.)

3 **D. Petitioners' Claims that the Commission is Required to Make Affirmative Findings**
4 **With Regard to Public Safety are Unsupported by the Coastal Act.**

5 While it is clear that the Coastal Act "public safety" is an element to be considered in
6 permit actions, it by no means imposes the duty to make detailed, affirmative findings that
7 Petitioners imply. In fact, Petitioners cannot and have not cited one section of the coastal Act
8 that mandates this level of findings regarding traffic, beach safety or anything other than for
9 "new shoreline development projects." [Pub. Res. Code §30212(a).] Petitioners' suggestion that
10 the Commission somehow is required under the Coastal Act to rule out or otherwise mitigate all
11 possible dangers in a proposed area, to make broad findings determining whether one access way
12 is the most suitable and to conduct studies on the effects of traffic safety in the area is not only
13 baseless, but it is clearly designed to have a chilling effect on maximizing coastal access.
14 Petitioners' allegations regarding the Commissions' duty to make certain detailed findings are
15 strictly conclusory, with no basis in fact or law.

16 **E. Notwithstanding Petitioner's Erroneous Contentions, the Commission's Findings**
17 **Clearly Support that the La Costa Beach Parcel is Suitable for Public Access And**
18 **Off-Site Mitigation.**

19 At this point, it has become clear that Petitioners' argument pattern is just to blindly and
20 blatantly assert that "the Commission has failed to address..." or "the Commission provides no
21 evidence to support that...", irrespective of how erroneous that allegation may be. Here, again,
22 there is substantial evidence supporting the approval of the La Costa Beach parcel for public
23 access and for off-site mitigation.

24 **1. The Off-site Mitigation Approach Will Provide Increased Public Access.**

25 Substantial evidence supports the Commission's findings that the mitigation approach is
26 good for the general public. In the Revised Findings, as well as in findings prior thereto, the
27 Commission recognizes that:

28 "The Coastal Act Section 30251 requires that visual qualities
of coastal areas shall be considered and protected, landform alteration
shall be minimized, and where feasible, degraded areas shall be enhanced
and restored. In addition, Coastal Act sections 30210 and 30211 mandate

1 that maximum public access and recreational opportunities be provided
2 and that development not interfere with the public's right to access the coast.
3 Likewise, section 30212 of the Coastal Act requires that adequate public
4 access to the sea be provided to allow use of dry sand and rocky coastal beaches."
5 [13 AR 1103.]

6 Further, to assist in the determination of whether a project is consistent with Section 30251 of
7 the Coastal Act, the Commission has, in past Malibu coastal development permit actions, looked to
8 the previously certified Los Angeles County Malibu/Santa Monica Mountains Land Use Plan (LUP)
9 for guidance. [Id.] Though the Commission has reviewed the LUP as an advisory tool, there is no
10 precedential authority that attaches to the LUP. Moreover, although provisions in the LUP have
11 been found to be consistent with the Coastal Act and provide specific standards for development
12 along the Malibu coast and within the Santa Monica Mountains, the Commission is under no legal
13 obligation to comply with its policies.

14 The Revised Findings adopted by the Commission note that in concert with Section
15 30251 of the Coastal Act, Policy 138 of the LUP provides that "buildings located on the ocean
16 side of and fronting Pacific Coast Highway shall occupy no more than 80% of the lineal frontage
17 of the site." Policy 141 of the LUP provides that "fencing or walls to be erected on the property
18 shall be designed and constructed to allow for view retention from scenic roadways." [13 AR
19 1103.]

20 "The original three project sites are located on Carbon Beach, a
21 built-out area of Malibu primarily consisting of residential development.
22 The Commission notes that the visual quality of the Carbon Beach area in
23 relation to public views from Pacific Coast Highway has been significantly
24 degraded from past residential development. Pacific Coast Highway is a
25 major coastal access route, not only utilized by local residents, but also
26 heavily used by tourists and visitors to access several public beaches
27 located in the surrounding area which are only accessible from Pacific
28 Coast Highway. Public views of the beach and water from Pacific Coast
Highway have been substantially reduced, or completely blocked, in many
areas by the construction of single family residences, privacy walls, fencing,
landscaping, and other residential related development between Pacific Coast
Highway and the ocean. Specifically, the Commission notes that when residential
structures are located immediately adjacent to each other, or when large
individual residential structures are constructed across several contiguous
lots, such development creates a wall-like effect when viewed from Pacific
Coast Highway. This type of development limits the public's ability to view the
coast or ocean to only those few parcels which have not yet been developed.
Such development, when viewed on a regional basis, results in potential cumulative
adverse effects to public views and to the visual quality of coastal areas." [13 AR 1103]

1 "Therefore, in past permit actions, in order to protect public views of the
2 ocean from public viewing areas and to enhance visual quality along
3 the coast, the Commission has required that new residential development,
4 such as the proposed projects, be designed consistent with the provision
5 of a public view corridor of no less than 20% of the width of the lineal
6 frontage of the subject site to provide for views of the beach and ocean
7 from Pacific Coast Highway [Montanaro (4-99-154), and Ioki (4-99-153 and 155)]."
8 [13 AR 1103, 1104.]

9 The Commission recognizes that the permits in the underlying three actions were previously
10 approved by the Commission with special conditions requiring the provision of a public view
11 corridor on each project site. [Id.] However, making the appropriate factual analysis further notes
12 that:

13 "The intent of the public view corridors required by the Commission
14 was to provide unobstructed public views of the beach and ocean from
15 Pacific Coast Highway over a portion of each site to mitigate the adverse
16 effects to public views that result from new development along the coast.
17 The proposed amendment is intended to provide for offsite mitigation
18 of the previously required public view corridors on the three original
19 subject sites." [13 AR 1104.]

20 "... the proposed amendment involves the deletion of three separate
21 public view corridors (with a combined width of 80 ft.) required by
22 the Commission The applicants propose to mitigate the loss of
23 public views resulting from the deletion of the public view corridors
24 on each project site by providing for the protection of public views and
25 public access across a separate 80 ft. wide undeveloped beachfront parcel.
26 The proposed mitigation site will be deed restricted to provide for public
27 views and public access to the ocean from Pacific Coast Highway across
28 the entire 80 ft. wide parcel and ownership of the parcel will be transferred
to the California Coastal Conservancy or other appropriate public agency.
The proposed offsite mitigation parcel is the same width (80 ft.) as the
combined width of the three separate public view corridors previously
required by the Commission [CDP 4-99-146 (Gamma) provided for a
24 ft. wide view corridor; CDP 4-99-185 (Broad) provided for a 20 ft.
wide view corridor; and CDP 4-99-266 (Daly) provided for a 36 ft.
wide view corridor]." [13 AR 1104.]

Here, the Commission, having the ability to determine that alternative access is appropriate
to implement the meaning of the Coastal Act in its broadest sense the Commission further provides:

"As such, the Commission notes that the proposed amendment
to mitigate adverse effects to visual resources from the underlying
development through the provision of both public views and
public access at a separate offsite location is generally consistent
with the intent of Special Conditions Eight and Nine of CDPs 4-99-
185 and 4-99-266. The Commission further notes that, although CDP
4-99-146 (Gamma) did not specifically include the above referenced
language as part of Special Condition Eight (which required the

1 provision of a public view corridor on site), the proposed provision
2 of public views and public access at an offsite location is generally
3 consistent with the intent of Special Condition Eight of CDP
4 4-99-146 in regards to the protection and provision of public views
5 along the coast and with Commission's previous actions regarding
6 CDPs 4-99-185 and 4-99-266. [13 AR 1105.]

7 The Commission recognizes that the proposed amendments will not protect public ocean
8 views along the adjacent Carbon Beach where the proposed developments are located, however,
9 they will protect the public views over a parcel of land equal in size to the *combined* width of the
10 three separate public view corridors. [Id.] The Commission also acknowledges that the public
11 vertical access from Pacific Coast Highway to the beach /ocean via the one mitigation parcel is a
12 valuable benefit. [Id.]

13 As provided above, the Commission's Revised Findings clearly explain the analytic route
14 the Commission traveled to reach its decision based on the evidence before it. [Code Civ. Proc. §
15 1094.5.] The Commission's findings weighed the "lost" partial views that would have been
16 provided by the 20% separate view corridors (as provided by the LUP), against the unique
17 opportunity to provide a broad, uninterrupted view corridor, in addition to public access, proposed
18 by the mitigation site, in an area of Malibu where public views and public access to the beach have
19 been significantly limited by private residential development. [13 AR 1105.] Here, the
20 Commission's factual analysis exceeded a finding of equivalency, the Commission clearly
21 determined that the public benefits provided by the off-site mitigation parcel exceeded those
22 provided by the on-site view corridor conditions, and furthered the intent of the Coastal Act.

23 **2. The In Lieu Fee Condition Has a clear Nexus to the Proposed Mitigation Parcel.**

24 Petitioners argue that the Commissions use of a commonly applied condition, i.e. the in lieu
25 fee condition, is, in essence, the payment of an arbitrary and large sum of money that is unexplained
26 and unsupported by the findings, and does meet the visual protection needs of the Coastal Act or the
27 LUP.. [POB, P. 15, lines 12-16.] Petitioners' claim, once again, is without merit.

28 Weighing the evidence and the potential loss of public access at stake, the Commission
found that it must have a means to open public accessways in Malibu should the proposed off-site
mitigation parcel be precluded from opening to public access. [13 AR 1109.] The Revised Findings

1 state in relevant part:

2 "The Commission notes that the proposed mitigation site was
3 recently purchased by the applicants for approximately \$1,000,000.
4 Thus, in the event that litigation precludes the parcel from being
5 opened to public or dedicated to the California Coastal Conservancy,
6 the Commission determined that, in order to ensure that adverse effects
7 resulting from the loss of the previously required public view corridors
8 are adequately mitigated, it would be necessary for the applicants to pay at
9 least \$1,000,000 (the approximate value of the proposed mitigation parcel)
10 to the California Coastal Conservancy for use to open or obtain other public
11 accessways in the Malibu area. Therefore, Special Condition Three (3) also
12 requires that in the event that litigation precludes the parcel from being
13 opened to public access, either visually or physically or both, the deed to the
14 parcel and the deed restriction will be returned to the applicants by the escrow
15 agent and the applicants shall pay to the California Coastal Conservancy the
16 greater of \$1,000,000 or, in the event the applicants sell the parcel within one
17 year of the return of the deed, the net sales proceeds; this money shall be used to
18 open public accessways in Malibu or to obtain public access in Malibu.
19 This provision ensures that, in the event that a court precludes opening of the
20 proposed mitigation site at 21704 Pacific Coast Highway (APN: 4451-003-033) to
21 the public, adverse effects to public views resulting from the underlying residential
22 projects, as amended, will still be adequately mitigated." [13 AR 1109.]

23 Based on the above factual analysis, the Commission found that the \$1,000,000 in lieu fee
24 condition was consistent with furthering the coastal access policies of the Coastal Act.^{2/}

25 3. Petitioners' Review of the Record With Regard to Commissioner Wan is
26 Factually Incorrect

27 Either purely in error, or perhaps clouded by their zest to characterize this matter as a
28 "backroom deal," Petitioners have clearly misread the record disclosing the ex parte
communications disclosed by Commissioner Sara Wan. Commissioner Wan openly discloses her
discussions with Eli Broad's representative Andrew Cushner, providing that on January 16th at 7pm:

21 "Andrew left a message on my machine stating that they had
22 located a possible property for use as mitigation. The address was
23 20816 PCH. I returned the call and left a message that I would go
24 take a look at it." [13 AR 1929] *Emphasis added.*

25 Then, the very next page in the record, 1/18, 2pm [32 AR 1930.] logically follows:

26 "I called to let Andrew [Cushner] know that I had looked
27 at the property and then I had contacted staff about it. I felt the
28 property was too far from the area to be able to claim a nexus

5. As previously discussed, the Commission's only reference to the LUP is as a guidance
tool; compliance with its policies is not a mandate.

1 between the impact and the mitigation. However, I had called
2 commission staff to see if there were any OTDs in the area.
3 If there were none, then I felt there might still be a public benefit.
4 However, staff informed me that there was an OTD just a few doors
5 away. Therefore I didn't see what argument I could make for the use
6 of the property." [32 AR 1930.]

7 As provided in full above, the foregoing disclosures in no way refer to the La Costa Beach
8 mitigation parcel at issue in this matter. The La Costa Beach site is located at 21704 Pacific Coast
9 Highway. [13 AR 1098.] The property referred to above is at 20816 Pacific Coast Highway. [32
10 AR 1929, 1930.] 21704 Pacific Coast Highway is *never* referred to in the disclosure forms.
11 Petitioners, in their zealous and desperate attempt to find a sinister alliance, have blatantly
12 mischaracterized the evidence, and have clearly compromised their own credibility. Petitioners'
13 allegations regarding "backroom deals" are just as flawed as their allegations here.

14 II.

15 THE COMMISSIONS FINDINGS WERE CONSISTENT WITH THE COASTAL ACT 16 AND WITH THE APPLICABLE REQUIREMENTS OF CEQA

17 Petitioners allege that the Commission violated CEQA because its staff report "utterly
18 fails to analyze environmental impacts, mitigation or alternatives". [POB P. 17., lines 7-9.]
19 Petitioners further argue that "the Commission must comply with CEQA in ensuring that the
20 environmental impacts of the proposal are analyzed and mitigated and must comply with
21 CEQA's procedural requirements to ensure timely public input on environmental issues and
22 adequate response to public concerns." [POB P. 17, lines 10-16.] According to Petitioner, the
23 Commission did neither. [Id.]

24 Here, again, Petitioners attempt to redefine the Commission's obligations and
25 responsibilities under CEQA as they interrelate with the Coastal Act. However, the itemized list
26 of findings that Petitioners allege are required of the Commission are not required by the Coastal
27 Act.

28 A. The Interrelationship of CEQA and the COASTAL ACT

The Commission's permit program and program for review of local coastal programs
have been certified by the Secretary of Resources under Public Resources Code section 21080.5.

1 In order to become certified, the Commission was required to adopt rules and regulations 1)
2 requiring that an activity will not be approved or adopted as proposed if there are feasible
3 alternatives or feasible mitigation measures available which would substantially lessen any
4 significant adverse impact on the environment, 2) including guidelines for the orderly evaluation
5 of proposed activities and the preparation of a plan or written documentation consistent with the
6 environmental protection purposes of the program, 3) requiring the Commission to consult with
7 all public agencies with jurisdiction over the activity, 4) requiring that final action include
8 written responses to significant environmental points raised, 5) requiring the filing of a notice of
9 decision with the Secretary of Resources, and 6) requiring notice to the public and interested
10 persons of the filing of the plan or written documentation. (Pub. Resources Code § 21080.5
11 (d)(2).) The written plan, here the staff report which becomes the Commission's decision and
12 findings, shall include a description of the proposed activity with alternatives and mitigation
13 measures and shall be available for a reasonable period of time for review and comment. (Pub.
14 Resources Code § 21080.5 (d) (3).) The staff report comprising the Commission decision and
15 findings becomes the substitute document, the document prepared instead of a negative
16 declaration or environmental impact report ("EIR").

17 With the certification of its program, the Commission is exempt from the requirements of
18 Chapters 3 and 4 of CEQA as well as Public Resources Code section 21167. Thus, where the
19 Commission is the lead agency, it is exempt from preparation of an initial study, negative
20 declaration and EIR. (Cal. Code Regs. Tit. 14, § 15250.) The Commission is subject to the
21 remaining requirements of CEQA, such as the obligation to consult with other responsible or
22 trust agencies, the policy of avoiding significant adverse effects and the need to analyze
23 cumulative impacts. (Ibid.; Environmental Protection Information Center v. Johnson (1985) 170
24 Cal.App.3d 604.) CEQA specifically recognizes there may be inconsistencies or conflicts
25 between CEQA and the Coastal Act and provides that in the case of such inconsistencies or
26 conflicts, the Coastal Act controls. (Pub. Resources Code § 21174.)

27 The document substituting for an EIR or negative declaration shall include at least the
28 following: a description of the proposed activity and either 1) alternatives to the activity and

1 mitigation measures to avoid or reduce any significant or potentially significant effects that the
2 project might have on the environment or 2) *a statement that the Commission's review of the*
3 *project showed that the project would not have any significant or potentially significant effects*
4 *on the environment and therefore no alternatives or mitigation measures are proposed to*
5 *avoid or reduce any significant effects.* This statement shall be supported by a checklist or
6 other documentation to show the possible effects that the agency examined in reaching this
7 conclusion. (Cal. Code Regs., Tit. 14 § 15252.) The staff report also should respond to
8 comments received. (Pub. Resources Code § 21080.5 (d)(2) (iv).)

9 In compliance with the foregoing authority, the Commission's Revised Findings provide
10 the following:

11 "Section 13096(a) of the Commission's administrative
12 regulations requires Commission approval of Coastal
13 Development Permit application to be supported by a
14 finding showing the application, as conditioned by any
15 conditions of approval, to be consistent with any applicable
16 requirements of the California Environmental Quality Act
(CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a
proposed development from being approved if there are
feasible alternatives or feasible mitigation measures available
which would substantially lessen any significant adverse
effect which the activity may have on the environment.

17 The Commission finds that, the proposed amendment,
18 as conditioned, will not have significant adverse effects on the
19 environment, within the meaning of the California Environmental
20 Quality Act of 1970. There are no feasible alternatives or mitigation
21 measures that would substantially lessen any significant adverse
effects that the activity may have on the environment. Therefore,
the proposed amendment, as conditioned, is determined to be
consistent with CEQA and the policies of the Coastal Act.
[13 AR 1110, 1111.]

22 Additionally, the detailed Revised Finding provided by Commission in conjunction with
23 the forgoing declarations, more than satisfies the Commission's obligation here. Petitioners'
24 assertions of what items must be included in order for the Commission's Staff Report or Revised
25 Findings to comply with CEQA amount to nothing more than conjecture, and are not supported
26 by law.

27 Furthermore, it is clear from the record that the Commission and the Real Parties
28 complied with all notice requirements. [12 AR 897, 898; 32 AR 1928; 50 AR 3485.]

1 Additionally, while Petitioner alleges that the City of Malibu learned about the La Costa parcel
2 off-site mitigation proposal only six days before the hearing, this is not supported by the record.
3 While the City Council member indicates that she was made aware on April 6, 2000, there is no
4 indication that the normal recipients of Staff Reports (City Planning, Public Library, City Hall,
5 etc.) had not received timely notice. Petitioners' sweeping generalizations are unfounded.

CONCLUSION

8 Here, the Commission clearly establishes that its decision to approve the off-site
9 mitigation proposed by the Real Parties-in-Interest, was supported by substantial evidence. As
10 such, Petitioners' writ request must be denied.

11 Petitioners have failed to meet its burden of establishing that there is no evidence
12 whatsoever to support the findings of the Coastal Commission in this matter. In light of the
13 applicable standard of review, Petitioners' writ should be denied as a matter of law.

14
15 DATE: March 20, 2001.

BILL LOCKYER, Attorney General
of the State of California
RICHARD M. FRANK,
Chief Assistant Attorney General
J. MATTHEW RODRIQUEZ,
Senior Assistant Attorney General
NEDRA E. AUSTIN,
Deputy Attorney General

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20 By NEDRA E. AUSTIN
21 Deputy Attorney General
22 Counsel for Respondent/Defendant
23 California Coastal Commission
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PROOF OF SERVICE

Re: LA COSTA BEACH HOMEOWNERS' ASSN. v. CALIF. COASTAL COMMISSION
Los Angeles County Superior Court Case No.: BS 063276

I am over the age of 18 years and not a party to the within action; my business address is 300 South Spring Street, Los Angeles, California 90013.

On March 20, 2001, I caused the foregoing document(s) described as:

RESPONDENT'S OPPOSITION TO WRIT OF MANDATE

to be served on the interested parties in this action as follows:

____ (BY OVERNIGHT DELIVERY) I caused such envelope(s) to be delivered by "Federal Express" addressed as follows:

XX BY FACSIMILE TRANSMITTAL to the offices of the following addressees:

Patricia L. Glaser
Clare Bronowski
David J. Altman, Esq.
CHRISTENSEN, MILLER, FINK, JACOBS
GLASER, WEIL & SHAPIRO, LLP
Fax: (310) 556-2920

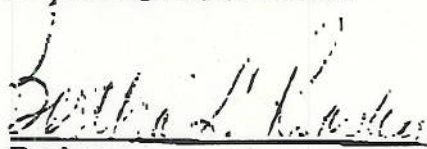
XX (BY MAIL) I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail at Los Angeles, California, addressed as follows:

Patricia L. Glaser
Clare Bronowski
David J. Altman, Esq.
CHRISTENSEN, MILLER, FINK, JACOBS
GLASER, WEIL & SHAPIRO, LLP
2121 Avenue of the Stars, 18th Floor
Los Angeles, CA 90067

____ (BY PERSONAL SERVICE) I caused to be delivered by hand to the office(s) of the addressee(s):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 20, 2001, at Los Angeles, California.


Declarant